

INITIAL STATEMENT OF REASONS

CCR §§ 2000, 2400, 2403

ATTEMPTED MURDER

This regulatory amendment will implement the court order in the case of *In re Tom Sims*, Sacramento County Superior Court No. 01F07562, whereby the court found that the matrices devised to determine the base terms for prisoners serving sentences of first and second degree murder are not sufficient when referring to prisoners convicted of attempted murders. The court ordered the Board to formulate matrices sufficient for setting parole release dates for attempted murderers.

This action will further clarify and implement the provisions of Penal Code section (§) 3041 which authorizes the Board to establish criteria for the setting of parole release dates and to fix prison terms for specified offenses.

California Code of Regulations (CCR) § 2403 currently provides in part:

“The panel shall set a base term for each life prisoner who is found suitable for parole. . . . The base term shall be established by utilizing the appropriate matrix of base terms provided in this section. The panel shall determine the category most closely related to the circumstances of the crime. The panel shall impose the middle base term reflected in the matrix unless the panel finds circumstances in aggravation or mitigation.

If the prisoner has been sentenced to prison for attempted murder, after determining the category as specified, the panel shall impose *one-half the middle base term*, unless the panel finds circumstances in aggravation or mitigation. For all attempted willful, deliberate and premeditated murders, the panel shall refer to matrix (b). For all other attempted murders, they shall refer to matrix (c).”

Specific amendments are as follows:

Section 2000. Amendments to this section will add the definitions of attempted murder of a peace officer or firefighter committed on or after January 1, 1995, and attempted willful, deliberate, and premeditated murder of a peace officer or firefighter committed on or after January 1, 1998. These definitions are necessary for accurate reference to specific crimes commanding life sentences.

Section 2400. Amendments to this section are necessary to delete reference to attempted murders committed on or after January 1, 1987, since this does not accurately reflect all prisoners sentenced to life for the more serious attempted murders pursuant to Penal Code § 664. Including all the effective dates for the specific attempted murders would be ambiguous and would not conform to the applicable clarity standard.

Section 2403. Revisions to this section will implement three new matrices for attempted murder crimes resulting in a sentence of life with the possibility of parole, as described in Penal Code § 664(a), (e) and (f). The matrices are analogous to the matrices for first and second degree murder in that they set out categories relating to the relationship of the prisoner to the victim and gravity and circumstances of the crime. The base terms are established in accordance with Penal Code § 3041: “ in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public”

The court found in the case of *In re Tom Sims* that applying the current first degree murder matrix for attempted willful, deliberate, and premeditated murder was irrational. The lowest suggested term on the first degree murder matrix is twenty-five years which, when applied to an attempted murder, results in a suggested term of twelve and one-half years. The court reasoned that the lowest suggested term should be seven years which is the minimum term for such a crime pursuant to statute. The court also noted that the current regulations fail to encompass the additional crimes of attempted murder of a peace officer or firefighter and attempted willful, deliberate and premeditated murder of a peace officer or fire fighter. In recognition of the court’s concerns, the Board is setting forth the proposed amendments.

The proposed matrix located at CCR § 2403(d) applies to those prisoners convicted of attempted willful, deliberate, and premeditated murder committed on or after January 1, 1987. Pursuant to Penal Code § 664(a), the punishment for willful, deliberate, and premeditated murder is life with the possibility of parole. Pursuant to Penal Code § 3046, no prisoner imprisoned under a life sentence may be paroled until he or she has served the greater of the following: a term of at least seven calendar years or a term as established pursuant to any other provision of law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole. Therefore, a prisoner convicted of this offense may not be paroled prior to serving seven calendar years. The proposed matrix for this offense includes the lowest suggested base term set at seven years to reflect the minimum term set forth in Penal Code § 3046.

In keeping with triad sentencing structure of the determinate sentencing law, each category contains a mitigated, middle, and aggravated term. Mitigating and aggravating factors are contained in the regulations at CCR §§ 2404 and 2405. Each ascending category contains circumstances more egregious than the last, therefore, the suggested terms increase. For example, category I-A sets out the least egregious circumstances of a willful, deliberate and premeditated murder. This category applies if the victim was an accomplice or otherwise implicated in a criminal act with the prisoner and the victim was unharmed or received minor injury. This category contains the lowest suggested terms of 7, 8 or 9 years. The highest category, IV-D, contains the most egregious set of circumstances: the attempted murder constituted a threat to the public order, occurred within an institution or involved the prisoner being hired or paid to commit the offense and the victim was subjected to prolonged infliction of physical pain. This category contains the highest suggested terms of 13, 14 or 15 years. This suggested maximum

term is lower than the current suggested term on the first degree murder matrix that applies to attempted murder which is 16 and one-half years. The suggested terms increase by one year for each category, i.e. the middle term for category I-A is 8 years and the middle term for the next category, I-B, is 9 years. This is in keeping with the structure of the other matrices in this section. The factors listed in the categories, I-IV and A-D, is an attempt to include all possible circumstances of the crime. The factors identified as Roman Numerals I-IV are taken from the current first degree murder matrix. These factors are common to both first degree murders and attempted willful, deliberate, and premeditated murders. These factors reflect the relationship between the victim and the prisoner and any threats to the public order. The factors identified by alphabets A-D reflect the degree of harm to the victim.

The proposed matrix at CCR § 2403(e) applies to those prisoners convicted of attempted murder of a peace officer or firefighter committed on or after January 1, 1995. Pursuant to Penal Code § 664(e), the punishment for this crime is life with the possibility of parole. Pursuant to Penal Code § 3046, a prisoner sentenced under Penal Code § 664(e) must serve at least seven calendar years. The proposed matrix for this offense has the lowest suggested base term set at seven years to reflect the minimum term set forth at Penal Code § 3046.

As stated above, each category contains a mitigated, middle and aggravated term set forth in CCR §§ 2404 and 2405. Category I-A is the least egregious of circumstances for attempted murder of a peace officer or firefighter. This category applies if the peace officer or firefighter was placed at risk for serious injury or death due to the acts of the prisoner and the peace officer or firefighter was unharmed or received minor injury. This category contains the lowest suggested terms of 7, 8 or 9 years. The highest category, IV-D, contains the most egregious set of circumstances: the prisoner committed an act causing a peace officer or firefighter to respond and then ambushed him/her and the peace officer or firefighter was subjected to prolonged infliction of physical pain. This category contains the highest suggested terms of 13, 14 or 15 years. This suggested maximum term is lower than the current suggested term on the first degree murder matrix that applies to attempted murder which is sixteen and one-half years. The suggested terms increase by one year for each category. This is in keeping with the structure of the other matrices in this section. The factors listed in the categories are designed to encompass possible circumstances of the crime. The factors on the proposed matrix identified as Roman Numerals I-IV reflect potential risk to the peace officer or firefighter and others, and the motivation of the prisoner. The factors identified by alphabets A-D reflect the degree of physical harm to the victim.

The proposed matrix located at CCR § 2403(f) applies to those prisoners convicted of attempted willful, deliberate and premeditated murder of a peace officer or firefighter committed on or after January 1, 1998. Pursuant to Penal Code § 664(f), the punishment for this offense is 15 years to life. The minimum 15-year term is not subject to credit reduction. A prisoner convicted of this offense must serve 15 years prior to being released. Therefore, the proposed matrix for this offense has the lowest suggested base term set at 15 years. The circumstances as listed in the categories are the same as

contained in the matrix at CCR § 2403(e), as both crimes involve the attempted murder of a peace officer or firefighter. The suggested terms increase by one year for each category consistent with the structure of the other matrices in this section.

Pursuant to CCR § 2403(a), these are only suggested terms and the hearing panel may set a term above or below the suggested terms if justified by the particular facts of the individual case.

New language at CCR § 2403(g) has been added to clarify that for other crimes in which no matrix has been provided, the panel shall impose a base term consistent with other crimes of similar gravity and magnitude, including any relevant Judicial Council rules and sentencing information, as well as any circumstances in aggravation or mitigation of the crime.

In addition to the above, several grammatical/stylistic changes have been made to maintain consistency in format. Reference citations have been added under “Note” at CCR §§ 2400 and 2403 to specify the Penal Code sections being implemented.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY

The Board must determine that no reasonable alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The subject of this regulatory action has a direct effect on prisoners and parolees. Any impact on small business would be indirect and likely insignificant. The Board has not identified any alternatives that would lessen any adverse impact on small businesses.